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August 30, 2007

MEMO ENCL/URSED

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BY FAX: (212) 805-7930

Hon. James C. Francis IV  
United States Magistrate Judge  
500 Pearl Street, Room 1960  
New York, NY 10007-1212

Re: Banno v. City of New York, et al.  
06 CV 2270 (KMK)

Dear Judge Francis:

I write again to seek the Court's assistance in obtaining the deposition defendant, Jon Doe Badge 6216. As Your Honor knows, I have been trying to secure the deposition of this defendant for seven months. I had hoped to at least be able to depose him before the statute of limitations passed but I had to cede to the successful efforts of the defendants in preventing me from doing so. I had also hoped that now the defendants would agree to a date for the deposition that we could submit to the Court but that has not been successful either.

Mr. Mirro offered me three dates, September 19, October 17 and November 14. In light of the briefing schedule set by Judge Karas for the appeal of your ruling prohibiting the defendant from appearing in disguise, I concluded that September 19 was unrealistic. I then contacted Mr. Mirro and asked that we schedule the deposition for October 17 but he advised me that the date was no longer available. He did suggest that he was fully available after November 14 for the purpose of scheduling all of the remaining noticed depositions. Two weeks ago I asked him for specific dates so that I could make plans to come to New York for those depositions. While he said that he would get back to me shortly, several additional requests have not produced any dates.

I am willing to conduct these depositions in the latter half of November but I am concerned that I not waive any right to reapply to the Court to notice the deposition of the other under cover officer mentioned in the interview with 6216 that I learned of in July. You denied my request to notice that deposition without prejudice to reapply after I take 6216's deposition.

I therefore request that Your Honor allow me to choose three dates in the latter half of November for the noticed depositions and to note that I will be permitted to reapply for the deposition of the other under cover after the deposition of 6216.

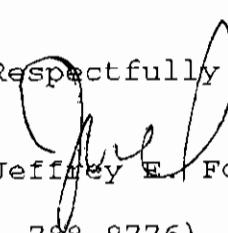
Hon. James C. Francis IV  
August 30, 2007  
-page 2-

If that is not acceptable, I ask that you allow me to choose three dates in October for that same purpose.

In addition, I request that the Court order Mr. Mirro to advise whether 6216 (or his "handler") prepared any field intelligence reports with respect to any aspect of the events of August 29, 2004 that are the subject matter of the complaint and to do so promptly. I noted from a declaration from Commissioner Cohen submitted to Judge Karas that under cover officers from the intelligence division did prepare such reports, but no such documents were identified in response to my document request. If 6216 (or his "handler") did prepare such a report, I am assuming that the defendants will claim the law enforcement privilege, a matter that should be resolved before the deposition. Since resolving these matters takes time, I want to get started as soon as possible.

Thank you for your attention to these matters.

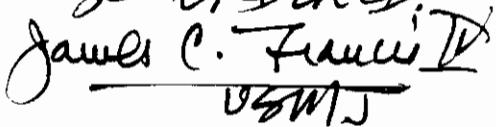
Respectfully submitted,

  
Jeffrey E. Fogel

cc: James Mirro, Esq. (By Fax: (212) 788-9776)  
Rachel M. Kleinman, Esq.  
Jason J. Rozger, Esq.

9/5/07

Absent agreement otherwise, the Ahearn and DeConne depositions shall take place on September 11, 2007 as previously scheduled. By that date, counsel shall advise me if they have agreed on dates for the Banno and 6216 depositions prior to November 15, 2007. If they have not, I will schedule so ORDERED them arbitrarily.

  
James C. Francis IV  
DSMJ